

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 26867 PERMIT 19265 LICENSE _____

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE
AND AMENDING THE PERMIT

WHEREAS:

1. Permit 19265 was issued to Frank B. Nichols on July 3, 1984 pursuant to Application 26867.
2. Permit 19265 was subsequently assigned to Bear Creek Hydro, A California Limited Partnership.
3. A petition for an extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board (Board).
4. The permittee has proceeded with diligence and good cause has been shown for said extension of time.
5. Permit Condition 10 pertaining to the continuing authority of the Board should be updated to conform to Section 780(a), Title 23 of the California Code of Regulations.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition 7 of the permit be amended to read:

COMPLETE APPLICATION OF THE
WATER TO THE PROPOSED USE
SHALL BE MADE ON OR BEFORE

December 31, 1995

(0000009)

2. Condition 10 of the permit be amended to read:

Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

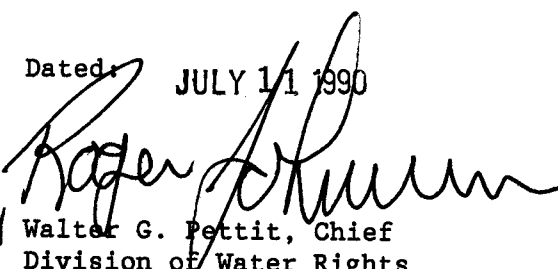
The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces;

(5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

Dated: JULY 11 1990

for 
Walter G. Pettit, Chief
Division of Water Rights

P19265

3-8-85 Asgd to TKO Power

7-1-85 Asgd to Bear Creek Hydro, A Calif Limited Partnership

STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 19265

Application 26867 of Frank B. Nichols

P. O. Box A, Shingletown, California 96088

filed on June 5, 1981, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

South Fork Bear Creek

Bear Creek thence

Sacramento River

2. Location of point of diversion:

40-acre subdivision
of public land survey
or projection thereof

Section

Town-
ship

Range

Base
and
Meridian

North 200 feet and East 775 feet
from center of Section 24

SW $\frac{1}{4}$ of NE $\frac{1}{4}$

24

31N

1W

MD

County of Shasta

3. Purpose of use:

4. Place of use:

Section

Town-
ship

Range

Base
and
Meridian

Acres

Power

NE $\frac{1}{4}$ of NE $\frac{1}{4}$

22

31N

1W

MD

The place of use is shown on map filed with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 65 cubic feet per second to be diverted from January 1 to December 31 of each year. (0000005)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)

7. Complete application of the water to the authorized use shall be made by December 1, 1988. (0000009)

8. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued. (0000010)

9. Permittee shall allow representatives of the State Water Resources Control Board and other parties as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)

10. Pursuant to California Water Code Sections 100 and 275, and the public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses, prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) to installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action takes into account the public interest and is necessary to protect public trust uses. All such actions shall conform to the standard of reasonableness contained in Article X, Section 2 of the California Constitution. (0000012)

11. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)

12. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion. (0000022)

13. For the protection of instream resources, the following minimum streamflows or the natural flow of the stream, whichever is less, shall be continually released past the point of diversion:

Date	Flow
March 1 to June 30	15 cfs
July 1 to February 28/29	6 cfs or natural flow whichever is less

No diversion for power generation shall be made whenever the flow in South Fork Bear Creek, immediately below the Sheridan Ditch diversion, is less than 2.0 cfs provided that the Sheridan Ditch users are not diverting more than their legal entitlement. Until further defined by adjudication or other legally binding proceedings the Sheridan Ditch rights are considered to be 12 cubic feet per second during the irrigation season from April 1 to October 31 and 3 cfs from November 1 to March 31. During the non-irrigation season, permittee agrees to release temporary additional emergency flows for diversion into the Sheridan Ditch for protection of agriculture during freezes and droughts. (0140400)

14. The permittee shall construct facilities at the Sheridan Ditch intake to measure and control the flow into the Sheridan Ditch and the required bypass flow. (0060999)

15. The streamflow release shall be monitored by recording gages located immediately downstream from the diversion site and at the Sheridan Ditch Diversion and be installed in a manner to record the flows into the Sheridan Ditch and South Fork Bear Creek. The daily record of maximum and minimum flows shall be provided to the State Water Resources Control Board and California Department of Fish and Game annually by December 31 of each year for the preceding October 1 to September 30 water year. (0060999)

16. The diversion structure for the penstock shall incorporate a screen to prevent entry of fish into the conduit. The fish screen design shall be approved prior to project construction by the California Department of Fish and Game and U. S. Fish and Wildlife Service. (0400500)

17. In order to prevent fish stranding, increases in the amount diverted shall be made gradually at a rate not to exceed 30% of the streamflow per hour. (0400500)

18. Permittee shall, prior to construction, file a Report of Waste Discharge pursuant to Water Code Section 13260 with the California Regional Water Quality Control Board, Central Valley Region, (Regional Board) and shall comply with all Waste Discharge Requirements issued by the Regional Board. If the Regional Board waives issuance of Waste Discharge Requirements, the permittee shall comply with Parts I and II of the "Guidelines for Protection of Water Quality During Construction and Operation of Small Hydro Projects" (Guidelines) as contained in the Water Quality Control Plans of the Central Valley Basin.

Specific requirements set forth in the permit shall prevail over any specific or general requirements in the referenced Guidelines in the event of conflict.

When complying with the Guidelines, pursuant to this condition, the permittee shall not commence construction until the Erosion Control Plan and any baseline data required by the Guidelines have been submitted to and approved in writing by the Regional Board; and before commencing sluicing operations, the permittee shall submit and receive written approval from the Regional Board of the Sluicing Operation Plan. (0000102)

19. Water diverted under this permit is for nonconsumptive uses and is to be released to Bear Creek within NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 22, T31N, R1W, MD&M. (0000111)

20. All rights and privileges to appropriate water for power purposes under this permit and any subsequently issued license are subject to depletions resulting from future upstream appropriation for domestic and stockwatering uses within the watershed. Such rights and privileges may also be subject to future upstream appropriations for uses within the watershed other than domestic and stockwatering if and to the extent that the Board determines, pursuant to Water Code Sections 100 and 275, that the continued exercise of the appropriation for power purposes is unreasonable in light of such proposed uses. Any such determination shall be made only after notice to permittee or licensee of an application for any such future upstream appropriation and the opportunity to be heard; provided, that a hearing, if requested, may be consolidated with the hearing on such applications.

(000I 001)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: JULY 3 1984

STATE WATER RESOURCES CONTROL BOARD

Raymond Wash

Chief, Division of Water Rights